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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944

No. 1147

MARJORIE HAIR BURTON, individually and as
administratrix of the estate of Frederic A. Burton,
deceased,

Petitioner,

vs.

FREEMAN COAL MINING CORPORATION, a corpo-
ration, WILLIAM J. KRUGLY and MATERIAL
SERVICE CORPORATION, a corporation,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF ILLINOIS.

APPENDICES TO PETITION AND BRIEF

JOHN J. DOWDLE,

Attorney for Petitioner.

CHARLES H. BORDEN,
Of Counsel.



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APPENDIX A.

CHRONOLOGY

OF

PROCEEDINGS IN THE BANKRUPTCY COURT.

Sept. 7, 1938—Proceedings for the reorganization of
the Burton Coal Company and its subsidiary companies,
the Freeman and Seymour Coal Mining Companies, under

Chapter X of the Bankruptcy Act, were instituted in the United States District Court for the Northern District of Illinois, Eastern Division, Consolidated Causes Number 69,296 (R. 17, 305, 306).

Sept., 1938—J. Roy Browning was duly appointed Trustee of said debtor corporations and has ever since and is now acting as such Trustee (R. 185, 195).

Jan. 15, 1942—A plan of reorganization was proposed by said Trustee (R. 275).

Feb. 4, 1942—Said plan of reorganization was approved by the Bankruptcy Court (R. 216).

Feb. 7, 1942—The respondent, Freeman Coal Mining Corporation, an Illinois corporation, was organized (R. 216) for the purpose of acquiring by purchase from the Trustee all of the estate and property of the debtor corporations, pursuant to said plan of reorganization (R. 60, 61). Extracts from the plan appear in Appendix B.

March 27, 1942—An order confirming said plan of reorganization was duly entered by the Judge of said Bankruptcy Court (R. 305).

April 1, 1942—J. Roy Browning, Trustee of the debtor corporations, became President of respondent Freeman Coal Mining Corporation (R. 218).

April 1, 1942—J. Roy Browning, as Trustee, transferred to respondent the assets and property of the debtor corporations dealt with by the plan of reorganization (R. 217, 218).

Between September, 1938 and April 1, 1942—J. Roy Browning as Trustee in said bankruptcy proceedings, paid petitioner (Fred A. Burton) the legal owner of the lands involved in this controversy (R. 190) the sum of \$22,451.16 as rent or royalty for the use of said lands (R. 223). Petitioner (Fred A. Burton) during the same period was employed by the trustee Browning to assist him in operating the companies (R. 189, 190).

May 12, 1942—The last payment in the amount of \$4,036.12, for royalties due for the use of said lands and leases for part of the month of February and including the last day of March, 1942, was transmitted to Burton by Browning, as Trustee (R. 223).

June 24, 1942—Respondents instituted this suit in the Circuit Court of Cook County, Illinois (R. 1).

APPENDIX B.

EXTRACTS FROM PLAN OF REORGANIZATION.

The Plan contemplates the sale by the Trustee of all of the tangible assets of the estates of the Burton Company, the Freeman Company and the Seymour Company, consisting of the real estate, leaseholds, mines, machinery, mining tipples, mining plants, buildings, power lines, railroad tracks, shafts, hoists, inventories, furniture, fixtures, cash, notes, evidences of indebtedness, deposits and accounts receivable to the Freeman Coal Mining Corporation, for Fifteen-Year Three Percent. Sinking Fund Debentures in the principal amount of \$573,880.00 and 14,347 shares of no par value common stock of the Freeman Coal Mining Corporation, as set forth in Article VI of this Plan, and the sale by the Trustee of all the intangible assets contributed severally by the three Debtors,* the permits, contracts, trademarks and good will, to the Freeman Coal Mining Corporation, for the sum of one dollar (R. 282).

D. CLAIMS OF UNSECURED CREDITORS.

Each unsecured creditor whose allowed claim amounts to less than \$40.00 will receive the principal amount thereof in cash. Each unsecured creditor whose allowed claim exceeds \$40.00 in principal amount, will receive one share of common stock of no par value of the Freeman Coal Mining Corporation for each \$40.00 of principal amount of such claim, and Fifteen Year Three Percent. Sinking Fund Debentures of the Freeman Coal Mining Corporation of the face value of \$40.00. No fractional shares will be issued and no debentures in multiples of less than \$40.00 face value will be issued. The amount of each allowed unsecured claim in excess of \$40.00, or

*The punctuational and typographical errors have been corrected in accordance with the testimony of the Trustee J. Roy Browning (R. 216).

multiples thereof, remaining after the issuance of the securities shall be paid in cash (R. 289).

THE FREEMAN COAL MINING CORPORATION.

The securities to be issued to the Trustee by the Freeman Coal Mining Corporation, consisting of Fifteen Year Three Percent. Sinking Fund Debentures in the principal amount of \$573,880.00, secured by a Collateral Trust Indenture to the Metropolitan Trust Company of Chicago, Illinois, and 14,347 shares of its no par value common stock, in payment of the purchase price, shall, upon the confirmation of this Plan by the court, be distributed by the Trustee among the unsecured creditors whose claims have been proven and allowed in these proceedings, in the manner provided in this plan (R. 293).

This Plan contemplates the liquidation and winding up of the affairs of the Burton Coal Company, the Seymour Coal Mining Company and the Freeman Coal Mining Company, and the ultimate dissolution of said companies (R. 293, 294).

The holders* of the Preferred and Common stock of the Burton Company shall have the right to subscribe for shares in the Freeman Coal Mining Company, as provided in Paragraphs "E" and "F" of Article IV of this Plan. All of the cash obtained from the subscriptions, if any, of the holders of the Preferred and Common stock of the Burton Company shall be additional capital of the Freeman Coal Mining Corporation (R. 294).

The Freeman Coal Mining Corporation has been organized under the laws of the State of Illinois, with a paid-in capital of \$50,000.00 in cash, and if this Plan is accepted by the creditors and confirmed by the court, the Freeman Coal Mining Corporation will have the following capital structure:

Fifteen Year Three Percent. Debentures

| | |
|-------------------|--------------|
| Authorized | \$580,000.00 |
| Outstanding | 573,880.00 |

Common Stock No Par Value

| | |
|-------------------|----------------|
| Authorized | 100,000 shares |
| Outstanding | 64,347 shares |

*No subscription rights were exercised (R. 229).

All of the Debentures and 14,347 shares of the Common stock will be delivered to the Trustee in payment for the property and assets of the estates of the Debtors, to be transferred by the Trustee to the Freeman Coal Mining Corporation, and the Trustee will distribute the said Debentures and stock to the unsecured creditors. In addition to the Fifty Thousand (50,000) shares of the Common stock which has been heretofore subscribed and paid for in cash by the organizers of the Freeman Coal Mining Corporation, said corporation will issue sufficient additional shares to the holders of the Preferred and Common stock of the Burton Coal Company as shall be subscribed by said shareholders as provided in this Plan (R. 294).

The acceptance of this Plan by the shareholders and creditors of the Debtors, and the confirmation of this Plan by the court, shall be an acceptance of the offer of the Freeman Coal Mining Corporation to purchase from the Trustee the above mentioned property and assets of the Debtors, and the payment of said purchase price in the manner and by the means herein provided (R. 295).

Attached hereto as Exhibit "C" is a proforma balance sheet of the Freeman Coal Mining Corporation, after giving effect to the Provisions of this Plan, as shown by the Trustee's Balance Sheets of November 30, 1941, and before provisions have been made for the payment of any allowances hereafter made by the court for compensation and expenses in connection with these proceedings, which amounts the Freeman Coal Mining Corporation will assume and pay in cash (R. 295).

ARTICLE IX.

The Continental-Illinois National Bank and Trust Company of Chicago filed its claim for all the Burton Preferred stock and all the Burton Common stock. The court has allowed these claims. * * * Claims of unsecured creditors in the amount of \$573,880.00 have been filed and allowed. The Continental-Illinois National Bank and Trust Company of Chicago has been allowed its general claim in the amount of \$368,240.78. The holder of the claims allowed to the Continental-Illinois National Bank and Trust Company of Chicago will, therefore, receive a

majority of the securities contemplated to be issued by this Plan (R. 298).

The Continental-Illinois National Bank and Trust Company of Chicago has entered into a contract with the Material Service Corporation of Chicago, Illinois, to assign and transfer to the Material Service Corporation all of the securities of the purchasing company that it may receive by reason of its allowed claims against the Debtors (R. 299).

EXHIBIT "C" ATTACHED TO PLAN (R. 303).

FREEMAN COAL MINING CORPORATION**PRO FORMA BALANCE SHEET**

(After giving effect to the provisions of the plan)

November 30, 1941

ASSETS**CURRENT ASSETS:**

| | |
|---------------------------------|--------------|
| Cash in banks..... | \$ 93,387.31 |
| Accounts receivable—trade | \$192,881.70 |
| Accounts receivable—other | 13,093.89 |

\$205,975.59

| | | |
|--------------------------------------|----------|------------|
| Less—Reserve for doubtful accounts.. | 2,277.12 | 203,698.47 |
|--------------------------------------|----------|------------|

| | |
|---|-----------|
| Cash deposits on bids and insurance | 11,875.00 |
| Inventory—coal | 8,307.82 |
| Inventory—supplies | 8,153.90 |

| | |
|-----------------------------------|---------------------|
| TOTAL CURRENT ASSETS | \$325,422.50 |
|-----------------------------------|---------------------|

FIXED ASSETS:

| | |
|---------------------------------------|-------------|
| Office equipment and automobiles..... | \$ 1,606.90 |
| Mining plant and equipment | 592,955.29 |
| Coal land | 5,000.00 |

| | |
|---------------------------------|-------------------|
| TOTAL FIXED ASSETS | 599,562.19 |
|---------------------------------|-------------------|

| | |
|---|-----------------|
| PREPAID EXPENSES AND DEFERRED ITEMS..... | 2,860.90 |
|---|-----------------|

| | |
|---------------------------|----------------------------|
| TOTAL ASSETS | <u>\$927,845.59</u> |
|---------------------------|----------------------------|

LIABILITIES**CURRENT LIABILITIES:**

| | |
|--|--------------|
| Accounts payable—trade | \$ 43,565.13 |
| Accounts payable—sundry | 521.73 |
| Accruals— | |
| Payroll | 39,196.37 |
| Royalties | 18,356.84 |
| Social security tax | 11,018.06 |
| Compensation awards | 7,504.80 |
| Federal income taxes | 40,774.06 |
| Sundry | 18,571.99 |
| Preferred claims—taxes and wages | 85,109.61 |
| Claims pending | 25,000.00 |

| | |
|--|---------------------|
| TOTAL CURRENT LIABILITIES | \$289,618.59 |
|--|---------------------|

| | |
|---|-------------------|
| FIFTEEN YEAR 3% DEBENTURES | 573,880.00 |
|---|-------------------|

CAPITAL STOCK:

| | |
|---|-----------|
| Common stock—64,347 shares no par value | 64,347.00 |
|---|-----------|

| | |
|--------------------------------|----------------------------|
| TOTAL LIABILITIES | <u>\$927,845.59</u> |
|--------------------------------|----------------------------|

Note: No provision has been made in the above balance sheet for fees and allowances which may be made by the court in the reorganization proceedings.